

Human Rights and National Security

Adda B. Bozeman†

This paper is informed by the following guidelines from the sponsors of the Lowenstein Symposium:

The focus . . . will be the claim advanced by nation-states that threats to their particular security necessitate and justify the curtailment of fundamental freedoms and liberties of the individual person within the national domain. We request that panelists address their remarks specifically to questions such as:

What are the contending claims made by state officials and individuals and the attendant circumstances?

What are the underlying policy justifications for derogations?

What, in such situations, constitutes a violation or deprivation of human rights?

What, until now, has been the international community's approach to the analysis and resolution of state security and human rights claims?

What ought the appropriate response to the international community be?

Reflections on this assignment persuaded me that these five specific questions are based on certain general, yet undeclared assumptions, and that it would therefore be impossible to deal with them without first examining the underlying matrix. These critical underlying assumptions are the following:

1. We live in a "system of independent nation-states."
2. This political system coexists with, or is identical to an "international community." (The relation between these two intellectual constructions is not made clear.)
3. Both systems are world-wide in scope.
4. Each is morally unified in the sense that politically relevant thoughts and actions are presumed to issue from shared values.
5. States, other political actors, and individuals are therefore subject to the same laws and norms, among them specifically those which concern on the one hand civil liberties, and on the other human rights. (The relation between these two clusters of concepts is not spelled out.)
6. Violations or derogations of civil liberties or of human rights are properly analyzed, judged, and resolved by the "international commu-

† Professor Emeritus of International Relations, Sarah Lawrence College.

nity,” as are all conflicts between claims to state security and claims to human rights.

The first sections of the paper discuss these assumptions, with emphasis on the ambiguities in the relationships between the “international community” and the “system of nation-states,” and between human rights and civil liberties. The paper then examines the policy relevance of the ideas here in play, focusing on considerations of state security, specifically as they affect the cause of civil liberties and political freedoms. The concluding sections concern the national security and human rights policies of the United States.

I. The “International Community” and Human Rights

The key concepts in the assumptions under discussion are obviously the international community and human rights—not the sovereign state and not the individual concerned with civil liberties. The assumptions imply that the international community determines whether, and if so which, derogations of human rights have occurred, how contending claims of state and citizen are to be resolved, and what comprises a given nation’s security interest. In other words, the international community is cast in the role of judge when the nature of a state’s domestic public order and an individual’s destiny in that state are at issue.

What, then, is this international community? Does it really exist? The symposium’s instructions do not supply a definition, but they suggest that the term is interchangeable with the phrase “the international state system,” and that both formulations are embodied in the United Nations.

No one today can deny the existence of an international state system. What is questionable is the claim that this system is also a morally or culturally unified international community, and that it therefore outranks the sovereign state within the latter’s domestic jurisdiction. This claim overlooks the basic norms of the international order of states, international law, and the United Nations Charter, all of which posit the opposite, namely, respect for state sovereignty in matters of domestic jurisdiction. We are thus not dealing with international legislative, executive, and judicial agencies that are qualified or empowered to regulate relations between the state and its citizenry. The logic of the international scheme requires instead that states evolve their own forms of government. It also suggests that the world’s governments are more likely to differ from each other than to converge on one particular model.

This truth is fully borne out by the records of history, which tell us

that political systems have come and gone in all provinces of the world. Some arose in morally unified communities or proved able to generate a moral consensus; others, by contrast, existed as plural or multicultural societies without reliance on shared norms and values. All political systems have been concerned with "security" in their public orders. However, and diverse as the quests were, the records tell us that "security" is an elusive goal everywhere, in great empires and commonwealths as well as in small folk societies, city-states, and nation-states. Throughout time, then, "security" has been in short supply for generations of human beings, whatever their political habitat and status in society.

This widely shared predicament in matters of administering human destinies within geographically or culturally bounded space, in conjunction with technically limited means of communication and general ignorance of distant lands and peoples, explains why no attempt was made throughout much of recorded history to cast the twin concepts of the inhabited world and of mankind into politically concrete organizational forms. The revolutionary turn was made only in the middle of the twentieth century by the extension of Europe's so-called modern states system to human societies everywhere.

II. The Individual and the State

The original characteristics of the modern state system are well known today. They were set out lucidly in the seventeenth century by Hugo Grotius in his *De Jure Belli ac Pacis* of 1625, as well as by the treaties of Westphalia which concluded the Thirty Years' War. What must be recalled today is that the system grew from a culturally shared value system anchored in the Christian faith, Greco-Roman legacies of secular law and government, and certain norms of inter-personal and public association to which European peoples north of the Alps consistently had subscribed. Refined by medieval and early modern theory and experience, these traditions converge on the following basic understandings of the nature of the individual and the state, and of the relation between the two.

The individual is conceived as an essentially autonomous person. Because his mind is recognized as the exclusive source of thought, he is presumed capable of entering into obligations, acquiring rights, and of committing himself voluntarily in association with others. The person—not a group of persons—is thus the primary legal concept in the West. It follows that persons are equal in the context of law, however unequal they may be in other contexts of life.

Human Rights and National Security

The state too is viewed as a creature of law, more particularly of contract law. It could thus be defined in classical Rome as "a partnership in law" and in eighteenth century England as a compact between successive generations meant to endure through time. According to this view of the state, men are meant to function as citizens, not as subjects doing the bidding of those who happen to hold power, and not merely as private persons following callings of their choice. Further, being citizens, men have civil liberties, including the rights to freedom of thought and speech and to due process of law, as well as civil obligations; these liberties, again, imply the political right to participate directly or indirectly in the governance of the state.

The ideas here in play did not immediately appear in fully institutionalized forms. The time was not ripe for parliaments in England till there was a fairly settled, strong, and regular system of order and justice in the land.¹ The histories of Europe's civil law countries record comparable findings that men must possess a deep law-abiding disposition before representative government can be expected to work.

The early convergence of Europe's diverse societies on the rule of secular law as the superior norm-setting reference for political organization and conflict resolution had lent moral unity to the cultural substratum upon which the new design for the ordering of international relations came to rest after the seventeenth century. In other words, the political system of independent states, each sovereign in its own territorial contours, was also an "international community." In light of this linkage it was both logical and necessary that conflicts between government and citizenry be viewed as matters of domestic jurisdiction.²

This entire concept of the law-directed state, more particularly as developed in the English common law, was carried to North America by English colonists. Their war for independence from England was fought in behalf of the civil liberties that had been their birthrights as English citizens; following their victory they established these freedoms firmly in the Constitution and the Bill of Rights of the United States.

It is possible to distinguish two phases in the subsequent extension of the modern state system to the world at large. The first began about the middle of the nineteenth century and was marked by the inclusion of several independent Asian polities, among them the empires of the Ot-

1. See A. GOODHART, *LAW OF THE LAND* (1966).

2. See generally Bozeman, *On the Relevance of Hugo Grotius and De Jure Belli ac Pacis for Our Times*, 1 GROTIANA 65 (1980); A. BOZEMAN, *THE FUTURE OF LAW IN A MULTICULTURAL WORLD* 34-49 (1971); A. BOZEMAN, *POLITICS AND CULTURE IN INTERNATIONAL HISTORY* 57-130 (Greece), 162-215 (Rome), 238-356 (Byzantium and Medieval Europe) (1960).

toman Turks, the Chinese, the Japanese, and the Kingdom of Siam. All were themselves long established political systems as well as morally unified communities, and all were firmly rooted in belief and value systems different from those underlying the European scheme.

These differences were fully recognized in the East and the West. Yet, the new alignment stimulated intricate borrowing processes, mainly in the context of law, in which Western constitutions and bills of rights were carefully examined and compared by Asian elites before decisions were made to graft appropriate concepts upon existing traditional institutions. In short, radical transformations of internal social structures generally were not intended, which helps to explain why the new frame of reference was esteemed mainly if not exclusively as the superstructure in the management of "new" international relations. Respect for domestic jurisdiction could thus remain the norm in Asia as in the homeland of the European prototypes of the modern state system, albeit with the difference that in Asia there was no organic nexus between globally valid and locally valid forms.

The second phase in the Westernization process commenced after World War I when India won quasi-recognition as a member of the international system. It reached its climax after World War II in the era of decolonization and the establishment of the United Nations, when state-making degenerated into a mechanical transaction, and when non-Western and Communist states old and new donned Western-type constitutions and bills of rights.

It was on the basis of this paperwork that approximately 100 states suddenly qualified as democracies, even though their respective societies had been and continued to be based on principles of administration very different from those implicit in their new appellation, that most were instantly admitted to the United Nations on the basis of such newly acquired credentials, and that the United Nations itself could purport to be a legally and morally unified international community as well as a globe-spanning state system.

III. Global Realities and the American Perception of Human Rights

The reality behind these appearances was and is wholly different. Not only is there no global consensus for determining the proper relationship between government and people, but despotisms far outnumber democracies today. This means that there is not even a voting majority in the modern society of states to support the twin notions of the individual as an autonomous person and a citizen. Indeed, as com-

munalism in one form or another eclipses individualism, and as authoritarianism prevails over freedom, the cause of civil liberties and political freedoms seems out of place and doomed, the very words eliminated from international discourse by torrents of references to human rights. How, then, can one argue that the international system is a unified community, or that this system, acting through absolute majorities of despotisms, is or ought to be, in charge of "analyzing, judging and resolving conflicts between claims to state security and claims to human rights," as the symposium guidelines assume?

This brings us to the second question we were asked to address: what are "human rights"? In this phrase a synonym for civil liberties and political freedoms? Does it cancel and replace these democratic concepts, or is it designed to subsume them? If the latter, should the two concepts be allowed to become confounded?

History and etymology teach us that we are dealing with two different but interacting sets of ideas, both of which originated in the West, albeit in different intellectual contexts.

"Human rights" is a modern constellation of ideas. Yet it is also a progeny of natural law theories and an evocation of what was known in classical and early modern European philosophy as the natural rights of man. The primary subject of these theoretical constructions is humanity or mankind, not the individual human being. Such a focus is expressly invited by Greek and Latin languages that instruct the mind to think in universal as well as in particular terms, in marked contrast, for example, to Chinese which simply cannot render such a notion as "human rights."³ It should not be overlooked, however, that the Occidental concept of the natural rights of man is grounded not in law but in philosophy. As students of Greek, Roman, and early Christian stoicism, of Hobbes and Locke, and of the Enlightenment well know, the learned speculated about the law of nature, the state of nature, the possibility of natural social contracts, and hence about the natural rights of man. These theories often supplied correctives to positive law and jurisprudence, but they were at no time allowed to qualify as law. The concept of man's natural rights was thus generally viewed by Europe's jurists as indeterminate, lacking in legal precision, and therefore as incapable of providing a reliable measure of what "right" *is* in a given situation.⁴ Neither logic nor experience would therefore have per-

3. Cf. I. RICHARDS, *MENCIUS ON THE MIND: EXPERIMENTS IN MULTIPLE DEFINITION* 89 (1932) (comparing Mencius' thought to Western tradition of analysis); Chu, *The Chinese Language*, in *AN INTRODUCTION TO CHINESE CIVILIZATION* (J. Meskill ed. 1973).

4. See generally H. MAINE, *ANCIENT LAW, ITS CONNECTION WITH THE EARLY HISTORY*

suaed law-minded elites to accept "human rights" as a synonym or a cover for civil rights.

This aspect of the European heritage was not accepted in the United States. True, successive generations of Americans prized the political freedoms as well as the civil rights that were theirs by virtue of the English common law. But they also were fervently convinced that these rights were not unique to Americans and that they inhered inalienably in human beings everywhere. An eighteenth century spokesman for Pennsylvania thus proclaimed that the liberties of Pennsylvanians were founded on the acknowledged rights of human nature. Others maintained that no written laws could create liberties, because all laws were mere declarations of an eternally existing law, of nature and right reason, if only because the ideal must be presumed to have existed before the real. No one spelled out what "the ideal" was, however, or explained in precisely which ways existing positive rights were deficient.

Further, and with special reference to the inquiries pursued by this paper, no critic seriously investigated the presence or absence of "rights" in mankind's non-Western provinces. Pessimism actually was voiced about the future of liberty in the world-at-large, as when it was noted that the rulers of the East were "almost universally absolute tyrannies"; that "the states of Africa are scenes of tyranny, barbarity, confusion, and every form of violence"; and that despotism was rising too in continental Europe where "human nature" had at one time been highly developed.⁵ But no one related these impressions to the abstractions that reigned supreme on the eve of independence. At that time Americans seem to have agreed with Alexander Hamilton, who wrote in 1775 that "the sacred rights of mankind are not to be rummaged for among old parchments or musty records. They are written as with a sunbeam, in the whole *volume* of human nature, by the hand of divinity itself. . . ."⁶

Americans, then, did not turn to history to confirm their faith in mankind's rights. Nor did they seriously examine either "nature" or

OF SOCIETY, AND ITS RELATION TO MODERN IDEAS 42-208 (1879); *see also* 2 J. BRYCE, MODERN DEMOCRACIES 3-165 (1921).

5. *See* B. BAILYN, THE IDEOLOGICAL ORIGINS OF THE AMERICAN REVOLUTION 79 (1971) (quoting various colonial newspapers).

6. *See id.* at 188; *see also* Bozeman, *The Roots of the American Commitment to the Rights of Man* in RIGHTS AND RESPONSIBILITIES 51-102 (1979) (proceedings of a conference sponsored by Center for Study of the American Experience, The Annenberg School of Communications, University of Southern California) (extended commentary on international, social, and individual dimensions of rights and responsibilities).

“human nature” before establishing these references as the source and sanction of their fundamental beliefs. No one was prepared, therefore, to acknowledge that “nature” is ruthless and value-neutral, knowing only birth, reproduction, and death,⁷ and that there is thus nothing natural, generally human, or universally valued about freedom of thought, habeas corpus, the Magna Carta, Roman law, or Aristotle’s disquisitions on law, justice, and equity. Rather, each of these recorded phenomena can be understood only as a unique human accomplishment that is not imitable at will.

The general truth implicit in this European heritage is fully borne out by the domestic history of the United States, for the nation’s judicial records make clear that rights, liberties, and obligations have been argued carefully in the legal context of the Constitution and the Bill of Rights, not in the ideological context of the Declaration of Independence. In the conduct of foreign affairs, however, it is precisely this ideological frame of reference, replete with untested assumptions about the place of man in life, that has nurtured and controlled the self-view of the United States, the perception of other nations, and therewith the country’s general orientation to international relations. No validation was required for the proposition that all men are born free as well as equal, or that the pursuit of happiness is an inalienable right. Given these and related certitudes, it is not surprising that Jeffersonian democracy was commonly projected as the model governance to all peoples on earth.

One root of this steadfast faith in man’s rights and prospects was no doubt the conviction that Americans are an entirely new kind of people, one called upon by “Providence” or “Nature’s God” to be “an asylum,” “a lesson,” and “a service” to mankind. Another, perhaps deeper, spring is Christianity, with its demanding order of moral and social values. This legacy was left by the early European settlers who actually built the nation, although it was not openly acknowledged in the eighteenth century climate of official atheism. A third sustaining source of the American persuasion in foreign affairs appeared in the late nineteenth century, when the nation began conceiving of itself as the refuge of the downtrodden from all societies on earth, a melting pot of races, cultures, and religions, and the land of opportunity for everyone in search of freedom and material gain.

This new imagery found expression on several levels. In domestic affairs it gave rise to policies and patterns of immigration that were to

7. See R. DAWKINS, *THE SELFISH GENE* (1976).

have the ultimate effect of de-Europeanizing the citizenry and its value system. Further, it accentuated the self-view of Americans as a Redeemer Nation and it enhanced the country's confidence that ethnic, linguistic, and religious differences between human beings in no way affect the cause of national unity, identity, and security. Transposed to the field of foreign relations, the imagery suggested that the world at large was also such a melting pot; here too different cultures and traditions could be melted down.

Before the outbreak of World War II it was clear that American thought about international affairs had remained deeply grounded in the intellectual world of the Declaration of Independence and that the ambiguities of the nation's dual commitment to civil liberties and natural or human rights had not been resolved. However, the records of actual foreign relations show that successive administrations had not been zealous in activating America's latent missionary impulse. Indeed neither Theodore Roosevelt's nor Woodrow Wilson's administration claimed that political rights and civil liberties were universally applicable.⁸

Changes in attitude and departures from international custom and national tradition became apparent toward the end of World War II, after the United States had become an established world power in international affairs. The tone was set by the administration of President Franklin D. Roosevelt. The State of the Union Message of 1944 thus included a proposal for "a second Bill of Rights," one that would stress rights to work, medical care, social security, and education.⁹ Serious doubts about the constitutional validity of such a program and about its relation to the existing bill of civil liberties and political freedoms were freely voiced in the United States, but they were not to be communicated effectively in the United Nations, where Roosevelt's domestic initiative sparked and supported numerous resolutions, covenants, and declarations in the fields of social, economic, and cultural rights in the late 1940's.

This poorly controlled interaction between the constitutional order of the United States and the political systems of other states had a decidedly adverse effect upon the value system, the identity, and hence the security of the United States. For what had been a blindspot or a set of mildly vexing incongruities in American national thought and sentiment suddenly was legitimated through transformation into an in-

8. Bozeman, *supra* note 6, at 83-97.

9. President Roosevelt's 1944 State of the Union Address, *reprinted in* N.Y. Times, Jan. 12, 1944, at A12, col. 1.

ternationally approved norm. The rights complex thus re-entered American public consciousness and policymaking in this newly hallowed form. Economic rights and group rights were henceforth allowed to outrank individualized constitutional liberties in political discourse, and the national heritage of values began ceding place to the convenience of international diplomacy.

The shift in political orientation peaked in the Carter administration. Its representatives thus announced a "new foreign policy that is democratic, based on our fundamental values and that uses power and influence for humane purposes"—one "designed to serve mankind"—and argued forcefully that the philosophy underlying this new human rights policy is revolutionary in an intellectual sense because it reflects the nation's origin and progressive values.¹⁰ Such evocations of the Declaration of Independence were no doubt emotionally satisfying in the short-range perspective, if only because they provided an easily comprehensible link between domestic and foreign affairs. However, they also had the inevitable long-range effect of contributing to the degeneration of once solid, trusted concepts and to the blurring of formerly distinct categories, meanings, and values, a confusion that was compounded steadily as the term "human rights" became the main rhetorical vehicle for U.S. diplomatic oratory in behalf of the nation's entire heritage and value system.

Reflections on this shift in American orientation and policymaking lead to the conclusion that the nation's latest generations may have taken too many liberties with the ideas of the Declaration of Independence. This great document was not conceived as the quintessential blueprint for the conduct of world-spanning international relations. Rather, it was drafted carefully by American statesmen of European descent for the purpose of justifying the fight for independence from a European mother country. Not surprisingly, it did so under the influence of Europe's eighteenth century philosophy of enlightenment. That is to say, the Revolutionary War was an intra-European conflict, fought and resolved in a value language peculiar to Western civilization. The Declaration's relevance for decision-making in foreign policy should therefore be viewed as strictly limited.

In addition to this global extension of the principles of the Declaration of Independence, another major factor that has conduced to deep conceptual confusion in our times is Marxism, an ideology that stands

10. See Bozeman, *supra* note 6, at 95-102 (bibliographical references and comments on the Carter administration's approach to human rights).

in open opposition to the beliefs incorporated in the Declaration of Independence, the Constitution, and the history of the United States. Marxism uncompromisingly stresses economic materialism and determinism, not the force of ideas and not individual initiative and willingness to take risks. It explains all thought as the derivative of historically dominant methods of production and hence as the expression of an economically dominant class of people. In our era, the doctrine holds, human destiny is and will be controlled by the capitalist class until the proletariat or working class ascends to power.

The individual and his "rights"—whether as an autonomous person or a citizen—are thus irrelevant conceptions in this version of society and history. In fact, no intrinsic sustained validity can be ascribed either to law in general or to the state, since both are understood as essentially predatory devices serving the interests of the dominant class. However—and here Marxism becomes a creed of salvation—both institutions are destined by history to wither away as the class struggle comes to an end with the victory of the world's working class and the establishment of a classless, stateless, lawless, and hence morally unified world society.

This ideology, which lay dormant in the West until it was activated politically in Russia's Bolshevik revolution, is widely accepted today by intellectual elites either in its authentic Marxist version or in that fashioned by Lenin, Trotsky, and such lesser modern followers of Marx as Marcuse and Lukász. Annual surveys of publications indicate a steady proliferation of Marxist studies, not only in the social sciences and economics, but also in history, theology, literature, and the arts. This fact, in conjunction with the striking prominence of Marxist orientations in the curricula of the West's institutions of learning, helps explain why economic determinism and scientific materialism are widely trusted as guidelines for thought and action among educated citizens, whereas confidence in the principle of individuation and the force of ideas is gradually receding.¹¹ Civil and political liberties, being corollaries of individualism and constitutionalism, slide into irrelevance, while attention turns methodically to the economic and social interests of special human groups or classes and to concern for mankind as a whole.

The shift of accent in so much of present-day American thinking about rights would probably not have been as decisive as it has proved to be had it not been for an important mood change in the social sci-

11. See Beichman, *Karl Marx Goes to College*, Wall St. J., May 14, 1982, at 24, col. 4; Lewy, *Academic Ethics and the Radical Left*, 19 POL. REV. 29 (1982).

ences. This revisionist intellectual trend, which is not necessarily related to Marxism, expresses itself in the desire to construct theories, models, and standards of human perception, motivation, or behavior for which universal validity can be claimed. The basic challenge—in stark contrast to scholarship in the natural sciences with which many social scientists claim affinities—consists of finding verbal covers for values, concepts, and institutions that are sufficiently loose to encompass a maximum number of similar phenomena.

This search for sameness and unity in theory has resulted in a leveling of genuine differences between cultures, societies, and individual human beings. A misrepresentation of the real world has thus received sanction mainly because scholars deliberately neglected modes of observation and analysis typical of the humanities, among them languages, religion, philosophy, law, and above all history, which instruct the mind to be alert to what is particular about a given human situation. Serious comparative studies cannot be conducted in such circumstances, yet such studies should have been completed before we began professing certainty about the rights which all men everywhere share today. It is true that meaningful comparisons of different European and North American systems of law and government have been and are being made. But this is so because social scientists and lawyers working in this field are entitled to take the shared Western legal culture for granted, consciously or unconsciously. Problems arise when they leave familiar territory and enter culturally alien ground.

The language of constitutionalism and civil liberties successfully has been installed in each of the approximately 120 despotisms that are member states of the United Nations today, but it speaks in counterpoint to the local realities of rule and right. The custodians of the nation's language, among them social scientists and lawyers, should have recognized long ago that our vocabularies are not adequate mirrors of Islamic law, Chinese law, or African customary law, and that we are therefore in no way equipped to say which rights the foreign law vests in the condition of being "man."

This is one of many enduring lessons taught by Sir Henry Maine in his discourse on the early history of contract, the indispensable root of constitutionalism and of civil rights:

The favourite occupation of active minds at the present moment, and the one which answers to the speculations of our forefathers on the origin of the social state, is the analysis of society as it exists and moves before our eyes; but, through omitting to call in the assistance of history, this analysis too often degenerates into an idle exercise of curiosity, and is especially apt to incapacitate the inquirer for comprehending states of society which

differ considerably from that to which he is accustomed.¹²

Turning to the domain of jurisprudence, Maine illustrated the point by taking light issue with Montesquieu's statement that the Troglodytes were a people who systematically violated their contracts, and so perished utterly. In fact, Maine noted, "the Troglodytes have flourished and founded powerful states with very small attention to the obligation of contract."¹³

The problem presented by the Troglodytes has continued to confront scholars as well as statesmen in the last centuries; all have had to deal routinely with accomplished polities in which no trace of constitutionalism can be detected. The general situation is the same today, but its challenge is more explicit due to our close coexistence with solidly entrenched, expansionist totalitarian systems in the Orient and Eurasia and with a multiplicity of new, small, politically weak states. However, and as noted earlier, all states, regardless of their differences, are officially equalized by virtue of the West's now internationalized constitutional code.

This farflung and complex development in world affairs may have been too unexpected and abrupt to arouse critical analytical thought in the ranks of our custodial intellectual elites. Combined with eagerness to make coexistence work, and above all with the dramatic revival of a near absolute trust in the creed announced by the Declaration of Independence as elaborated by modern social science, it probably accounts for the swiftness with which the flag of "human rights" was hoisted and that of "civil liberties and political freedoms" lowered. Academic lawyers did not offer much resistance to this substitution, at least not when addressing it in the context of foreign relations. Oddly but fortunately they have remained steadfast in their respect for the integrity of legal concepts and terms when dealing with the question of rights in domestic affairs.

The human rights net in which thought and foreign policy making are now caught has in this way come to shelter the most fanciful of propositions. Because "society," not the individual, is presumed to have the rights, and because most societies are political despotisms, it is despotic government that invents and ordains the rights. But what is one to make of a "right" to culture, especially when the culture in question does not accommodate legal concepts of "right"? Or of a "right" to history when records were not or could not be kept? Or of a "right"

12. H. MAINE, *supra* note 4, at 301.

13. *Id.*

to development when futurist time perspectives are missing on biographical and social levels? Or of a “right” to armed struggle in behalf of liberation when exercising such a right implies the establishment of yet another despotism or the destruction of an existing group’s identity?

Such claims have no relationship to law. They can be accepted only as items of artful rhetoric in attempts at policymaking. Much the same is true of human rights to health, education, freedom from poverty, and to foreign assistance in behalf of these concerns when such demands are pressed in the United Nations. They qualify as economic programs, legislative projects or expressions of desire, but not as bills of rights fit to be voted into internationally binding law. In short, the human rights issue has degenerated into a cover for the promotion of state interests that are unrelated to individual liberties and freedoms. Chameleon-like, it assumes whatever color is appropriate to the prevailing political season.

In light of these developments it is difficult to address some of the general questions posed by the symposium guidelines. How can one identify derogations of rights when rights are not susceptible to reliable definitions? Would one not have to say in such a vacuum of norms and standards that both phenomena are ruled by “underlying policy justifications,” those, namely, which emanate from authoritarian and totalitarian regimes? Given that these make up the absolute majority of the modern society of states as symbolized by the United Nations, is it not perverse to imagine serious conflicts of jurisdiction between “the state” and “the international community” when it comes to judging the merits, respectively, of “state security and human rights claims”? Finally, and in regard to the core problem posed by our assignment, is it not perhaps idle speculative play to wonder about the proper way of judging contentions between state or government claims to security on the one hand and individual claims to security and freedom on the other when one knows that dissident or contending individuals are swiftly and definitively silenced in most states?

In short, the preceding overview of the rights issue permits the following general conclusions:

1. Internationally recognized human rights are for the most part paper rights. Being neither identifiable nor enforceable in the context of law, they are devoid of concrete relevance to the security considerations of the individual and the state.
2. Freedom and security are possible only in political systems that have regard for legally enforceable civil rights and obligations. Such constitutional arrangements exist in Western Europe where they

originated, North America, Australia, and a few Oriental societies, chief among them Japan, which have known how to accommodate this particular Western heritage. They are deliberately excluded in the totalitarian systems of Communist states and they have been cast out by most non-Communist non-Western states. The provisions of the United Nations Covenant of Civil and Political Rights are far removed from the actuality of civil and political life in the new nations of the so-called Third World.¹⁴

3. The United Nations continues to be an organization that facilitates interactions among sovereign states. The notion that it represents a legally and morally unified international community should be dismissed as a recent figment of the American imagination.

4. Since the United Nations is a constellation of disparate legal, moral, ideological, and administrative systems, it is neither qualified nor capable to pass judgment on derogations or violations of rights in a member state or to determine whether a particular derogation is justified by considerations of national security.

5. These realities should persuade the United States and its citizenry that national security and all foreign policymaking, including that relating to the rights issue in other states, are matters of domestic jurisdiction.

Such a reorientation is now under way in the United States. It was evidenced by President Reagan's nominee to be the Assistant Secretary of State for Human Rights, Elliot Abrams, who has noted that we must live in the world as we find it and that we must try to be effective.¹⁵

IV. Culture, Human Rights, and American Foreign Policymaking: the Case of the Soviet Union

The real political world today is not much different from the world that has existed for the last five decades. It remains technically unified by the terms of the state system, but, behind a formal sameness in political nomenclature and semantic unity in discourse, it continues to be a manifold of cultures and political systems new and old. It is clear that nations are not tied together by a common history; that their guiding ideas of what is right and what is wrong are not analogous; and that, therefore, their local or regional designs for public order, security, and

14. For comments and illustration, see Emerson, *The Fate of Human Rights in the Third World*, 27 *WORLD POL.* 201 (1975); see also *FREEDOM IN THE WORLD: POLITICAL RIGHTS AND CIVIL LIBERTIES* (R. Gastil ed. 1978).

15. See *A Neoconservative for Human Rights Post*, N.Y. Times, Oct. 31, 1981, at A7, col. 4.

survival should not be presumed to converge on identical themes. In short, it is as illusionist now as it ever was to believe that hundreds, even thousands of diverse societies would rally to a single rendition of the human being's place in life.

What has changed in the last decades is the American perception of this relation between unity and diversity in world politics. Whereas our trust in the eventual emergence of a world-spanning frame of values formerly was tempered both by awareness of differences between world views and modes of thought, and by a long-standing commitment to the principle of state sovereignty and the rules of traditional international law, this trust now seems to rule political thought in the United States without regard to these two qualifying principles. Indeed, both were allowed to atrophy just when it became clear that recent transplants of Western norms had not invalidated the traditional heritage of most non-Western societies and that convert-states to Marxism-Leninism would not suspend or outgrow those aspects of their ideology and form of government which deny the very principle of individual freedom.

Another question posed by the symposium organizers—how precisely does one identify those states whose political cultures are fundamentally incompatible with the rights recognized in documents such as the Covenant on Civil and Political Rights—can only be answered after one comes to terms with the relationship between “security,” “culture,” and “the state.”

Culture or civilization refers to a given people's linguistic, religious, and historical heritage.¹⁶ Implicitly or explicitly acknowledged by its denizens as the source of basic values, norms, and customs, culture guides thought and behavior in social and political contexts, gathers succeeding generations around shared ends, and steadies life by providing a collective will to endure and survive adversity. In short, a nation's cultural infrastructure ensures the group's unity and identity over time and space. It thus endows men with the kind of security and confidence that cannot be communicated by political systems which are transient in function and inception whether they issue from the home culture or are imposed from without.¹⁷

In terms of this analysis, then, smashing the culture is the surest way

16. My understanding of “culture” is obviously different from what the term “political culture” projects. See A. BOZEMAN, *POLITICS AND CULTURE IN INTERNATIONAL HISTORY* (1960); Bozeman, *Civilizations under Stress, Reflections on Cultural Borrowing and Survival*, 51 VA. Q. REV. 1 (1975).

17. International history is rich in documentation of this relation between culture and political system. Consider, for example, the histories of Europe and China.

of destroying the state, and insecurity inevitably sets in when the cultural infrastructure is significantly destabilized. In other words, it is important to temper interventions in a culturally alien life style if one aims at creating, developing, or maintaining independent states.

The propositions that the cultural substratum of a nation instills self-confidence and that states cannot be independent in foreign relations unless they are internally secure are not congenial to modern Americans. At any rate, beginning in the middle of this century the United States began pushing Westernization, usually in the name of modernization and development, with little regard for the values and ideas that had sustained the non-Western societies over time. The climax of this simplistic levelling drive came with our interventionist human rights policy, which aimed openly at modifying the cultural infrastructure of allies and potential allies in the state system we had built. Predictably, the policy succeeded all too often in unhinging and confusing hard-pressed nations, and prepared many for takeover by Communist adversaries. Yet, and in counterpoint to this disposition, the United States consistently has stressed the need for statehood, viewing it as the source and shield of national security as well as of international peace and order.

The interaction of these inconsistent policy goals helps explain why and how United States foreign policies confidently could propagate self-determination and political independence without prior studies of an aspirant people's inner social condition and culture. Such questions as whether a projected state was likely to be viable, whether ethnically disparate elements were actually desirous or capable of merging into a nation-state, whether constitutional rule was a locally fitting form of government, or whether the new state would comply with the established norms of international law and the state system as symbolized first by the League of Nations Covenant and thereafter by the Charter of the United Nations, were simply viewed as irrelevant. This was so because it was taken for granted first that the desire for independence is innate in peoples and therefore unassailable on any ground, and second, that any newly independent state would identify automatically with the values underlying existing Occidental states, particularly those of the United States.

World developments have not borne out these expectations. The American cultivation of the state system, however, remains in principle the most constructive means toward fashioning a world environment favorable to the national security not only of the United States but of the majority of states, provided that we recognize cultural disparities

and that we take the concept of the independent state seriously. In fact, this is the most urgent mandate of our times if we want to arrest the expansion of monolithic totalitarian world states, the only contemporary alternative to the state system.

The Communist state of the Soviet Union is antithetical to the norms underlying the state system. This means that its understanding of security and of the need for derogations of human freedom is also wholly different. In identifying the Soviet Union here as one of “those states whose political cultures are fundamentally incompatible with the rights recognized in . . . the Covenant on Civil and Political Rights,” attention must briefly be drawn to the following.

Marxist-Leninist doctrine as interpreted by the Soviet Union insists that human destiny is the function only of material circumstances, more particularly of the ongoing world struggle between economic classes, and that the state and law are just two facets of one single phenomenon, the power of the dominant class. Only political freedoms that express the interests of the working class are recognized, and they must be claimed and exercised under the political guidance of the Communist Party. Individuated rights, by contrast, are viewed as bourgeois illusions and entrapments. Because the individual human mind is not accepted as the source of independent thought, freedom of thought is dismissed as an entirely aberrant and irrelevant notion, as are claims to liberty of speech and due process of law. Real freedom—so the promise of the doctrine implies—will be attainable only when human beings cease to think and feel as individuals endowed with separate inalienable rights.

The logic of this totalitarian ideology insists that evidence of an independent bent of mind must be viewed as a transgression of the established order and as a serious threat to state security. Those in charge of administering the creed are therefore not only entitled but also obligated to silence non-conformist speech, throttle non-conformist thought, and do away with non-conformist people. That the Soviet elite has carried out these duties has been evidenced over the last sixty years by official Soviet records of criminal trials, autobiographical annals of life, deprivation and death in labor camps, internal exile, gulags, mental institutions, and by reports from such international monitoring agencies as Amnesty International.

The security interests of the Soviet Union and of all Marxist-Leninist states are thus in theory and reality incompatible with individual civil liberties and political freedoms. “Security,” however, also requires that this basic design be camouflaged by language proclaiming its opposite.

All Communist dictatorships are for this reason democracies or republics on paper, each duly adorned with constitutions, legal codes, and bills of rights. The Soviet constitutions of 1936, 1947, and 1977 and those of the Soviet Union's satellite states thus enumerate the classical Western freedoms.¹⁸ They also prescribe, however, that these rights can be exercised only to strengthen the established order. Further, they may not be advanced against the state, because all rights are, after all, granted by the state, or against the Communist Party, which is sanctioned in the 1977 constitution as "the leading and guiding force of its [the Soviet Union's] political system, of all state and public organizations."¹⁹

The semantics of Communist governance that have characterized Soviet politics since the Russian revolution are skillfully contrived and deployed to serve important purposes of statecraft. They make it possible to dissimulate the actuality of the monolithic system when it is expedient to do so, to fracture or decompose the Occidental value system so as to confound thought and its communication in the West and in non-Communist non-Western societies, and to manipulate decision-making in the United Nations which proceeds, officially at least, in accordance with the norms of Western constitutionalism. In short, the aim of these spurious references to civil and political freedoms, which are properly described as disinformation, is to win the war against the mind that the Soviet Union continues to wage relentlessly so as to make human thought conform wittingly or unwittingly to the dictates of Marxism-Leninism and the policy aims of the Communist regime.

In light of the Soviet Union's long and unconcealed record of steadfast belief and behavior it was illusionist on the part of the United States to assume that the Soviet regime would or could write off its ideological commitment, political system, and security interests by signing promises in Helsinki in 1975 to abide by the different United Nations covenants on human rights. Evidence to this effect began accumulating soon after the Helsinki accords were signed as it became clear that both new and traditional techniques of political persecution

18. See, e.g., CONSTITUTION OF THE U.S.S.R., arts. 48-50 (1977); DRAFT CONSTITUTION OF CUBA, arts. 50-52 (1975).

19. CONSTITUTION OF THE U.S.S.R., art. 6 (1977); see A. VYSHINSKY, *THE LAW OF THE SOVIET STATE* 55 (1948); Peselj, *Recent Codification of Human Rights in Socialist Constitutions*, 11 *HOW. L.J.* 342 (1965). For extended comments on this aspect of the issues here under consideration, see Bozeman, *supra* note 6, at 56-61; Bozeman, *How to Think About Human Rights: The Human Factor in U.S.-Soviet Relations*, in *PROCEEDINGS OF THE NATIONAL SECURITY AFFAIRS CONFERENCE* (1977); Bozeman, *Covert Action and Foreign Policy: Comparative Studies in Statecraft*, in *INTELLIGENCE REQUIREMENTS FOR THE 1980's: COVERT ACTION* 15-79 (R. Godson ed. 1980).

were being applied, including harassment of political prisoners, reprisals against their friends and relatives, and the filing of false criminal charges in order to bring political cases into criminal courts.

In short, the Soviet Union did not take Basket III of the Helsinki accord seriously, and we should have been fully aware of that. Even more important, it was as predictable in foresight as it was proved certain in hindsight that the Soviet Union saw the accords as a stratagem or tactic of deception in the ongoing war of nerves which aims at achieving hegemony in Europe without provoking a "real" war with the United States. The true Soviet intent at this meeting on security and cooperation in Europe was succinctly identified in the following terms: "[t]he Russians wanted the conference to endorse the present frontiers of Europe—not only the political frontiers between states, but the ideological frontiers between East and West."²⁰ Both sets of frontiers had been advanced steadily—by military diplomacy and action during World War II and by conference diplomacy from Yalta onward. The Baltic states were thus speedily incorporated in the Soviet Union, and each post-war uprising of East Europeans in behalf of national independence, democracy, and civil liberties, whether it convulsed Czechoslovakia, Poland, East Germany, or Hungary, was suppressed brutally without eliciting forceful counter-measures from the United States and its allies.

Long before Helsinki, then, it should have been clear that the Eastern European states were not sovereign, and that their governments were not capable of thinking or acting independently in regard to matters of national security and the liberties of their citizenry. In fact, they had been deprived officially of their sovereignty in domestic and foreign affairs by the Brezhnev doctrine, the 1968 "constitution" of the Soviet power bloc, which proclaims that "the sovereignty of each socialist country cannot be opposed to the interests of the world of socialism, or the world revolutionary movement" and, by implication, to the interests of the Soviet motherland. The doctrine defines the Soviet Union as "the central force" in the world revolutionary movement and empowers it to intervene with force in order to maintain Communist governments in Eastern Europe.²¹ This open avowal of Soviet imperialist dominion was reaffirmed in an even harder line a year after the

20. *Real Security in Europe*, Times (London), July 7, 1975, at 13, col. 1 (editorial). For a lucid critique of U.S. diplomacy in this matter, see Sulzberger, *To the Finland Station*, N.Y. Times, Aug. 2, 1975, at A21, col. 3.

21. See Rostow, *Law and the Use of Force by States: The Brezhnev Doctrine*, 7 YALE J. WORLD PUB. ORD. 209 (1981).

signing of the Helsinki accords. At that time the Soviet Union allowed publication of an article by the then Chief of Staff of the Warsaw Pact forces which stated without qualification that the main military purpose of the Warsaw Pact was to suppress counterrevolutionary activity in Communist countries,²² a course of action that was taken both in 1981-1982 in Poland and in 1968 in Czechoslovakia.

Conditions in the "Peoples' Democracies" of Eastern Europe thus have remained unchanged either by the Helsinki accords or by U.S. policy. This lack of change also became clear in the immediate aftermath of the conference. For example, the Czechoslovak government justified harsh measures against members of the Charter 77 human rights group with the argument that the state's constitution guarantees freedom of speech and the right of individuals and organizations to submit proposals and grievances to state bodies only when such rights are exercised in keeping with the interests of the working people of Czechoslovakia and in full respect for the socialist state in all its activities.²³ Since these conditions had not been met, the Prague regime insisted that Charter 77 appeals violated the state's constitution, and that it was entitled therefore to harass, interrogate, arrest, and otherwise penalize signers of the Charter.²⁴ This announcement prompted the first official accusation by the United States that a government had failed to live up to the Helsinki accords.²⁵ Since then, scores of accusations have followed, some addressed to the Soviet Union, others to Eastern European states. Gathered at the Madrid Conference on Security and Cooperation in Europe, the West's representatives sharply criticized Warsaw's repressions in Poland and accused the Soviet Union of "active political and material cooperation" with the Polish military regime. Sounding the common Western theme that martial law in particular was a violation of the Helsinki Final Act, the British Foreign Secretary warned that

[t]he events in Poland have for the moment dashed the hopes not only of the people of Poland but of all the peoples of Europe who regarded the Final Act as the symbol of a process of peaceful change.²⁶

The Swedish Foreign Minister concluded that the gathering had become "a self-destructing exercise, where what little was left of the Hel-

22. For excerpts from General Sergei M. Satemenko's article, see *N.Y. Times*, May 8, 1976, at A5, col. 1.

23. See *Czechoslovaks Say Signers of Petition Seek Return of '68*, *N.Y. Times*, Jan. 13, 1977, at A3, col. 4.

24. See *Human Rights Charter Criticized in Prague*, *N.Y. Times*, Jan. 25, 1977 at A5, col. 1.

25. See Gwertzman, *U.S. Asserts Prague Violates Covenant About Human Rights*, *N.Y. Times*, Jan. 27, 1977, at A1, col. 6.

26. *Soviet Ends Effort to Bar Talks on Poland*, *N.Y. Times*, Feb. 13, 1982, at A3, col. 1.

sinki spirit threatens to evaporate.”²⁷ But the American delegate remarked that “We are not pushing for a hasty recess. . . . We have come here with no date.”²⁸

To all this one is entitled to add that the West, as led by the United States, lacked in Helsinki and in Madrid a comprehensive policy scheme, linking the rhetorical defense of individual political freedoms to other, more credible defenses of both liberty and state security. In fact, a long-range strategic doctrine in which the parameters of security for the United States and Europe are set out clearly has been lacking throughout this century, probably because foreign policymaking in the American democratic system cannot rely on a time-transcendent bipartisan consensus on national security requirements. The absence of this dimension in thought and planning explains why we did not know better than to pay for the Helsinki basket of paper rights by ratifying three processes that have slowly but ineluctably undermined our position in the world—the invalidation of the state system, the forfeiture of geopolitically vital European space, and the erosion of Western culture.

These processes have been furthered methodically by the Soviet Union from its inception onward. In regard to the state system, the traditionally defined “state” was deliberately left in place as the cover for political organizations on local and international levels that differ radically from the traditional norm of the state. The Leninist doctrine of ideological and territorial expansion spawned an entirely new type of multi-national empire—first in Russia and subsequently in China and Viet Nam—by insisting that existing territorial state boundaries are wholly provisional since the rightful limits of jurisdiction have not yet been reached. However, “state” continues to be the correct appellation for all the formerly independent states that have been absorbed by these imperial states. The Soviet Union’s Eastern European satellites are not classified as protectorates, colonies, or dominions in the manner customary, for example, in the defunct French and British empires. Rather, each continues to rank as a sovereign state in international relations and is entitled to a full vote under provisions of the United Nations Charter.

The United States did not pay serious attention to the slow but well directed transformation of the world’s multi-state system into a few ideologically closely related imperial spheres. This was so because we had long misperceived the Soviet Union as just another, albeit more

27. *Id.*

28. *Id.*

radical socialist state, and because influential intellectual elites in the West willingly had subscribed to the Leninist article of faith that imperialism could be generated only by "capitalist" states in Europe and North America. Theory thus effectively screened the reality that the Soviet Union was committed to assembling and administering imperial holdings in all of the world's continents, and that it was doing so mainly by destabilizing and dominating the "new" states, those, namely, which the United States had helped create in the context of the World Wars by insisting on the dissolution of the defeated German, Turkish, and Austrian empires and thereafter of the French and British empires.

A much neglected aspect of this protracted, historically fateful contest between two opposite world views and value systems is the gradual dissembling of numerous concepts adjunct to that of the democratic state, among them the principle of self-determination. This idea was as important to Woodrow Wilson as it was to Lenin. Both appreciated it as a device to break up existing empires. However, Wilson accepted such a potential defiance of an established political order as the necessary prelude to the achievement of lasting national independence. Lenin, by contrast, treated self-determination as a tool to pry freedom-seeking groups, such as ethnic or religious minorities and colonial peoples, loose from the existing bourgeois "imperialist" order only to make them serve the Soviet Union first as shock troops in the struggle against the camp of capitalist democracies and thereafter as satellites in the Soviet-dominated camp of socialism. In other words, the Soviet Union has used independence as a tactic for inducing dependence.

The Soviet Union has successfully deployed its well coordinated long-range policies, especially by advancing and consolidating its territorial and ideological frontiers in Europe. This achievement constitutes an unqualified defeat for the security interests of the United States and Europe's remaining independent states. Indeed, it is no exaggeration to say that we peaceably lost the security which our military victory over Nazi Germany had been meant to assure, and that we have ourselves to blame for that defeat. Nothing in our experience of the twentieth century world had thus persuaded us that all foreign policy initiatives, especially those relating to Europe, need in-depth analysis in geopolitical, historical, and cultural terms if they are to be carried out effectively.

The case for the primacy of Europe in the destiny of the United States need not be argued here. The record of our policy failures suggests, however, that successive American administrations—in striking

Human Rights and National Security

contrast to successive Soviet regimes—did not ask or come to terms with a few elementary, yet strategically vital questions. What is Europe? Where does it—and therewith the West—take off from the Eurasian landmass? Geographically, Europe begins in the vicinity of the Ural mountains. But where in terms of history, culture, and politics is the ideological frontier separating East from West and indicating which space is geopolitically so vital to the collective security interests of Western states that it warrants holding even at great cost?

The answers to these questions would have been within reach of U.S. statecraft had “security” been related to cultural consciousness and had the “rights issue” been used as an indicator of political identity. Serving as a tool for political analysis, it would have indicated clearly that generations of people in the broad belt stretching from Finland to the Adriatic Sea have lived to the west of a most important line separating communities Christianized by Rome (the later split between Catholicism and Protestantism is not relevant in this context) from those Christianized by Constantinople. Prominent among the latter are the Russians, who succeeded to the imperial Byzantine and Greek-Orthodox tradition before experiencing that of their Mongolian conquerors and who therefore were left untouched by the great movements of the Renaissance. Prominent among the former are Baltic groups, Poles, Germans, Bohemians, Croats, Hungarians, and others who participated for centuries in the political, moral, and legal systems which together make up the civilization of the West, and who consequently understand the concept of individuated freedom. It is here, therefore, that the Communist break with the humanist tradition has been experienced most acutely and that revolts on behalf of nationalism, Christianity and individual rights are taking place continuously.

This relation between “Eastern” and “Western” Europe has generally gone unnoticed in the United States, where policy-related thought ignores history and culture and remains short-term, pragmatic, and therefore basically reactive rather than creative. Whether due to oversight, ignorance, or deliberate disposition, the United States did not pursue the rights issue when to do so would have meant the difference between security and insecurity, or victory and defeat, namely, before, during and after World War II, when a powerful United States could have insisted on holding the real boundary between East and West. Instead it gratuitously ratified the Soviet-imposed Oder/Neisse line and the division of Germany—recognized as Europe’s (and NATO’s) heartland today—and allowed the West’s hedge-guarding nations to pass behind the Iron Curtain one by one. The Helsinki climax of this

development was then simply rationalized by President Ford, who believed that the failure of the Helsinki process would leave Europe no worse off than it had been.²⁹ In fact, seven years later, when Polish military forces advised by their Soviet masters, were putting down another determined Polish uprising, Secretary of State Alexander M. Haig, Jr., had to wonder: "[h]ow can these actions be reconciled with Polish and Soviet signatures of the Helsinki accords?" while also assuring the world that "[t]he American people, and the other peoples as well, could never countenance a cynical attempt to place the Polish tragedy beyond the reach of the Helsinki Final Act."³⁰

V. Human Rights and American Foreign Policymaking: the Case of East Asia

The scope of the present paper allows only a selective review of non-Western records as they bear on the task requested of me, namely to identify "those states whose political cultures are fundamentally incompatible with the rights recognized in documents like the Covenant on Civil and Political Rights." In the following case references, the focus remains on: (1) the relation between state security and the individual's civil and political freedoms; (2) the roots of prevalent conceptions in the nation's cultural infrastructure; and (3) the impact of the situation on the security of the United States.

The People's Republic of China (P.R.C.) is a totalitarian system and therefore by definition deliberately excludes civil liberties and political freedoms. Earlier comments made in connection with the Soviet Union, therefore, apply to the P.R.C. as well. This conclusion is borne out fully by the Beijing regime's own statements, official press commentaries, information from Chinese visitors and escapees, and above all by detailed analytical reports about life in China from experienced Western sinologists and scholarly journalists.³¹ These sources firmly document that millions of Chinese were liquidated because they were viewed as counterrevolutionaries, former landlords, Kuomintang offi-

29. See *President Ford Interviewed for Public Television*, 73 DEPT. STATE BULL. 377, 377-78 (1975).

30. Address by Secretary Haig, Conference on Security and Cooperation in Europe (Feb. 9, 1982), reprinted in DEPT. STATE BULL., Apr. 1982, at 37, 38.

31. See generally S. LEYS, *CHINESE SHADOWS* (1977); C. JO-HSI, *THE EXECUTION OF MAYOR YIN AND OTHER STORIES FROM THE GREAT PROLETARIAN CULTURAL REVOLUTION* (N. Ing & H. Goldblatt trans. 1978); T. BERNSTEIN, *UP TO THE MOUNTAINS AND DOWN TO THE VILLAGES* (1968); F. BUTTERFIELD, *CHINA ALIVE IN THE BITTER SEA* (1982); Leng, *Human Rights in Chinese Political Culture*, in *THE MORAL IMPERATIVES OF HUMAN RIGHTS: A WORLD SURVEY* 81 (K. Thompson ed. 1980); AMNESTY INTERNATIONAL, *POLITICAL IMPRISONMENT IN THE PEOPLE'S REPUBLIC OF CHINA* (1978).

cials, or simply “bad elements”—first in 1949-1952 and thereafter in 1957 during the so-called “Anti-Rightist Campaign,” in 1966-1969 during the Cultural Revolution, in 1973-1975 during the “Anti-Lin Piao and Anti-Confucius Campaign,” and thereafter in consequence of the “Denunciation of the Gang of Four” affair.

As in the Soviet Union, political repression and persecution have been an ongoing policy since the establishment of the state, despite the existence of Western-type constitutions and codes of law. After the “Hundred Flowers Period,” several million students, teachers, scientists, writers, lawyers, doctors, and other intellectuals were sent to work in the countryside or sentenced to labor camps. During the “Cultural Revolution,” all individuals, indeed whole families, became potential targets. “Almost every Chinese I got to know during my 20 months in Peking,” Fox Butterfield notes, “had a tale of political persecution.” From their stories it would appear that a whole generation of Chinese knew nothing but arbitrary accusations, violent swings in political line, unjustified arrests, torture, and imprisonment,³² a destiny also shared by non-Chinese minorities and conquered nations. For example, genocide was a decisive aspect of the takeover of Tibet.³³

Violations of the human being’s physical and mental integrity seem to have been as programmed in Communist China as they were in the Soviet Union. This similarity, together with numerous other analogous patterns of administration, among them the persecution of religions and their leaders, explains a Chinese informant’s recent statement that “China really isn’t that different from the Soviet Union.”³⁴ Comparisons of those two totalitarian systems also indicate, however, that Chinese methods of thought control are more refined. One such method is

32. See F. BUTTERFIELD, *supra* note 31, at 347. Official Chinese confirmation of abuses under the “Gang of Four” include the following notices: in a broadcast in November 1977, the Public Security Ministry reported cases of forced confessions and torture of disgraced party members. *The People’s Daily*, in February, 1978, reported cases of discrimination against people because of family origin. The New China News Agency, in June, 1978, charged that “tens of thousands” in Shanghai had been “cruelly tortured and persecuted.” Deng Xiaoping is reported to have spoken of the existence of a state of lawlessness, arbitrary rule, and “fascist tyranny” under the influence of the “Gang of Four.”

It was reported on June 6, 1978 that the Beijing government had decided to release some 110,000 political prisoners detained since 1957. *N.Y. Times*, June 6, 1978, at A1, col. 2. See generally Leng, *supra* note 31.

33. See TIBET AND THE CHINESE PEOPLE’S REPUBLIC: A REPORT TO THE INTERNATIONAL COMMISSION OF JURISTS BY ITS LEGAL INQUIRY COMMITTEE ON TIBET (1960). See in particular *id.* app. to ch. 4 at 215; statement no. 1 at 221; statements nos. 4-5 at 225-26; statement no. 5 at 226; statement no. 7 at 229; statement no. 10 at 233; statement no. 26 at 253; statement no. 32 at 259; statement nos. 35-39 at 265-71; statement no. 44 at 276.

34. F. BUTTERFIELD, *supra* note 31, at 451.

the "struggle session," which a prisoner in Maoist China described as follows:

[t]he Struggle . . . is a peculiarly Chinese invention, combining intimidation, humiliation, and sheer exhaustion. Briefly described, it is an intellectual gang-beating of one man by many, sometimes even thousands, in which the victim has no defense, even the truth.³⁵

"Truth" is what the party leadership establishes from occasion to occasion. Facts are facts only when perceived as such by the authority of the day—a type of thought control that encompasses the present and the past, as a young Chinese explained:

[i]f the leader says of such and such an event, "it never happened"—well, it never happened. If he says that two and two are five, well, two and two are five. This prospect frightens me much more than bombs.³⁶

Relentless programs of "political study" and a tight policing system are everywhere in place to buttress this operational code. Government agents operate in every city street or block overhearing and overseeing residents, directing family relations, and censoring or penalizing infractions. In short, the ordinary person does not have the right to think or act independently. The very idea of an individuated existence, not to speak of individuated rights and political freedoms, is proscribed in the P.R.C. as totally incompatible with the security of the state.

The P.R.C. today is rightly defined by its ideologues as a Marxist-Leninist-Stalinist society. It is also an heir, however, to the Han, Sui, T'ang, and Manchu dynasties. In contrast to Russia's Communist empire, which can be identified more or less exclusively with the ideology of Marxism-Leninism, that of modern China is strongly supported by an authentic self-contained and creative civilization which had endured for at least three millennia before being challenged—first in the nineteenth century by Europe, including Tsarist Russia, and then in the twentieth century by Communist Russia. The Maoist destruction of the Chinese republic established in response to Western influences was attended by the almost automatic resuscitation of ancient, deeply entrenched principles of administration which agreed in most essential respects with those espoused by Mao Tse-tung. Indeed, it was the vigorous presence of non-Communist theories which explains why Leninism could be "sinified" easily, and the same set of traditionally effective precepts may well eventually modify the Marxist-Leninist axioms now in force.

Mao Tse-tung's writings and speeches, as well as the publications of

35. *Id.* at 342.

36. *Id.* at 405.

the controlled press, abound in explicit and allusive references to the Chinese past. These references are negative with respect to Confucianism, but deferential to the Legalists (or Realists), among them in particular Sun Tzu, Shang Yang, and Han Fei Tzu, who were collectively instrumental in assuring the first unification of China in the third century B.C. after the long period of "The Warring States" and in laying solid foundations for China's bureaucracy and statecraft.

Neither Confucianism nor Legalism can be associated with principles evocative of civil liberty and political freedom. The focus of Chinese ethics and politics has never been on the individual person but rather on the web of human relations in which each mortal was presumed to be enclosed. Confucians thus insisted that the human being is above all a function of the family and that he must therefore comply with the obligations attendant on the particular status assigned him in the context of the "Five Classic Relations." An objective and impartial public law was absent in this scheme, while inequality was the ethically prescribed norm. For example, because the power of the parent over a son was absolute, the father was entitled to punish the latter's filial disobedience by beheading, strangling, or burying him alive if the transgression was classified as severe. Similar punishments could be meted out to daughters-in-law as when they falsely accused parents-in-law. In accordance with the same hierarchical order the young were forbidden to fight back when attacked by those older than themselves. Inquiries into motivation, intent, and possibilities of accidental wrongdoing were never required, because the issue was the affront to the status occupied by the superior person in the case, not the act *per se*.

The Legalists, by contrast, championed an egalitarian public "law," but this law, based on the firm conviction that human nature is intrinsically evil, also stood for punishment—albeit by command of the government.³⁷

37. For detailed records and discussions of the issues here under review, see T. CH'U, *LAW AND SOCIETY IN TRADITIONAL CHINA* 27, 42-52 (1961) (parents' authority, family law and relations, father's power to punish); P. CH'EN, *CHINESE LEGAL TRADITION UNDER THE MONGOLS, THE CODE OF 1291 AS RECONSTRUCTED* 41-98 (1979) (penal system, administration of justice, and torture to induce confession); J. SPENCE, *THE DEATH OF WOMAN WANG* (1978) (misery of lower class life in seventeenth century China); 1 *THE T'ANG CODE* 17-23 (W. Johnson trans. 1979) (the death penalty, collective prosecution, family law, offenses against superiors, and life exile). The T'ang Code is the most important of China's codes. It was adopted by Japanese emperors and greatly influenced Korean and Vietnamese law. See A. BOZEMAN, *THE FUTURE OF LAW IN A MULTICULTURAL WORLD* 140-60 (1971) (comments and references to other authorities on Chinese law); J. ESCARRA, *LE DROIT CHINOIS* (1936); J. NEEDHAM, *2 SCIENCE AND CIVILIZATION IN CHINA* (1954).

On the Legalists, see *BASIC WRITINGS OF MO TZU, HSUN TZU, AND HAN FEI TZU* (B.

The argument that Legalism and Leninism did not meet by chance is corroborated by a study of China's history and its harshly repressive penal codes, beginning with the T'ang Code, which is based on early Legalist legislation. Maoists pointed proudly to the "progressive view of history" which permeates Legalist literature and to commendable precedents in punishing and policing practices developed by the Legalists. These are illustrated by the following:

A person who failed to report on and expose an "evil person" would be cut in two, whereas a person who reported on and exposed an "evil person" would be rewarded in the same way as one who decapitated an enemy in the front line.

Lord Shang advised Duke Hsiao of Ch'in to compile a register by dividing the people into groups of five and ten households; to adopt the punitive method of collective liability; to burn the Book of Poetry and the Book of History in order to make laws and regulations clear; to stop private requests. . . ; to encourage those who were engaged in farming and war. . . . The Duke implemented these measures and Ch'in became rich and strong.

The Second Emperor was pleased with the record of Legalist policies of "surveillance and castigation," with the result that "half of the men walking on the roads had received punishment and the bodies of executed men piled up in the market places."³⁸

However, the Beijing regime also has to contend with the determined revival of certain traditional customs in the officially condemned Confucian family system. The traditional preference for a male child over a female one is thus said to pose the greatest obstacle to the current policy of limiting new families to a single child. The government press reports regularly that wives known to expect female offspring are urged to abort and threatened with divorce. Some of those who give birth to daughters are abused and humiliated, beaten senseless by their husbands and parents-in-law, or driven into mental breakdowns and suicide. Also it is as common today as it was in the past to dispose of unwanted female children, usually through drowning.³⁹ Other customs that have been resuscitated include the selling of young women and the betrothal, by parental arrangements, of children as young as five years.

Watson trans. 1964); W. YANG, *THE BOOK OF LORD SHANG: A CLASSIC OF THE CHINESE SCHOOL OF LAW* (J. Duyvendak trans. 1963); A. WALEY, *THREE WAYS OF THOUGHT IN ANCIENT CHINA* (1939). See also SHANG YANG'S REFORMS AND STATE CONTROL IN CHINA (L. Yu-ning ed. 1977) (analysis of "political historiography" in Maoist China).

38. SHANG YANG'S REFORMS AND STATE CONTROL IN CHINA, *supra* note 37, at 35-36, 42, 48 n.1. The last quotation is taken from K. Hsiao, *Legalism and Autocracy in Traditional China* 127 (unpublished manuscript).

39. For one of numerous reports on this aspect of modern China, see Wren, *Old Nemesis Haunts China on Birth Plan*, N.Y. Times, Aug. 1, 1982, at A9, col. 1.

Human Rights and National Security

The individual, then, was not recognized in pre-Communist China as an autonomous person or as a citizen endowed with political freedoms. His official status changed during the brief period of Westernization, when laws, culminating in the 1930-1931 code, were drafted from European models. This reform had no chance of becoming effectual, however, because it was superimposed on a code of ethics and institutions that remained thoroughly Chinese.⁴⁰

A similar if not analogous curve from nativism to Westernization and back again to Chinese roots can be delineated in regard to the twin conceptions of the state and national security. The Western idea of "the state" was entirely alien to the Chinese, as were the allied notions of sovereignty and territoriality. Historically, the Chinese thought of the space they occupied as the exclusive abode of "Civilization" writ large. Peoples on the periphery of this core or Middle Kingdom of the world were thus by definition perceived as inferiors—barbarians subject to conquest whenever this was deemed necessary by the imperial administration, and forever in need of tutelage which might include chastisement by punitive war. In sum, China was conceived as an empire whose contours had to be indeterminate. Yet it also constituted a family of nations on the analogy of the classical Confucian model of the natural family. For just as the father, the elder brother, or the younger brother had assigned roles to play in the nuclear association, so did each inferior people have its special tasks, privileges, and tribute assessments. China's Asian orbit, then, was not a system of equal sovereign states, but rather, in the context of the doctrines of unity and the Heavenly Mandate, it was viewed as merely the outer fringe of the administration of China proper. This world view explains why international law of the Western type could not make a meaningful connection with the Chinese thought world.⁴¹

The preceding identification of China as a culture and a political system suggests the following conclusions. First, individuated legal rights always have been inconceivable in China, and international covenants assuring respect for such rights should at no time have been presumed to have meaning in that civilization. What is new in Maoist

40. J. ESCARRA, *supra* note 37 at 15, 31, 39, 59, 436, 451.

41. See Bozeman, *supra* note 1, at 74-80 (juxtaposition of the Western and Chinese systems of public order); see also Bozeman, *War and the Clash of Ideas*, 20 ORBIS 61 (1976); J. ESCARRA, *supra* note 37; A. WALEY, *supra* note 37, at 217 (sole aim of the state is to maintain and, if possible, to expand its frontiers); I. Hsu, CHINA'S ENTRANCE INTO THE FAMILY OF NATIONS, THE DIPLOMATIC PHASE 1858-1880 13-16 (1960) (no consciousness of "the state" as a nation or as a jurisdiction bounded by definite territorial frontiers; rather, the cause of China was traditionally related to the Emperor as the Son of Heaven and the Father of a family of nations).

China is the totalitarian control of private and public life, which eclipsed, and perhaps destroyed, China's deeply rooted humanist infrastructure, with its strong accent on aspiration and learning and its intricate codes of ethics for inter-personal and inter-group relations. Second, state or "regime" security as conceived by the Chinese Communist leadership is absolutely dependent on the total subjugation of China's people and on the greatest possible degree of control over non-Chinese nations in adjoining areas.

These conclusions lend support to one of Fox Butterfield's observations. For all the cynicism, awareness of corruption in party ranks, unemployment, inflation, and other troubles he found, he yet "had no sense that the Communists' hold on China is in danger. For one thing, their control apparatus with its police, the *danwei* organization, the street committees, and political study, remains intact. . . ."42 Security policies of the United States, therefore, cannot rely on China's compliance with the norms of freedom we espouse. In light of our incessant reprimands of rights violations in such non-totalitarian states as Chile, Argentina, El Salvador, or South Africa, it is interesting that we have not taken the P.R.C. severely to task for its ongoing non-conformism. The following considerations, set forth by Michael Oksenberg, supply some of the reasons for this oversight, at least as it relates to the State Department during the Carter administration. Oksenberg identifies the United States with the value of liberty, the Soviet Union with the commitment to accelerate economic growth, and the P.R.C. with the value of "economic equality and the capacity of the dispossessed to improve their lot through will and organization."⁴³ He grants that Peking's pursuit of its goals has resulted in a political order "devoid of meaningful political freedom," and that the P.R.C. today, is "a utilitarian society, without frills and with little concern for beauty and aesthetics." Yet he insists that each of the three values—liberty, growth, and equality—speaks to an important aspect of the human condition and that one should seek for ways which allow the United States, the U.S.S.R. and the P.R.C. "to remain true to their respective revolutionary traditions." The major challenge as seen by this former State Department authority on China is:

42. F. BUTTERFIELD, *supra* note 31, at 448.

43. Oksenberg, *Sino-American Relations in a New Asian Contest*, in DRAGON AND EAGLE; UNITED STATES-CHINA RELATIONS: PAST AND FUTURE 14 (M. Oksenberg & R. Oxman, eds. 1978). For a discussion of the difference in focus between Americans and Chinese in discussing particular attributes of their national character, see *id.* at 17. For the astounding statement that the rulers of "both traditional and contemporary China have considered one of their principal tasks to be the creation of a moral order," see *id.* at 19.

Human Rights and National Security

[c]an the ideas of Jefferson and Mao Tse-Tung . . . coexist as we seek areas of cooperation? . . . If the terms of exchange between these two societies can become genuinely reciprocal, then we may discover that there is less tension between the values of our two revolutions than is currently believed.⁴⁴

The human rights issue was obviously not considered relevant either for an understanding of the P.R.C. or for strategic planning in behalf of American security interests.

The continued shifts in our perception of Communism and of the P.R.C., and our equally continued policy of oscillation between the extremes of pragmatism and principle—in this case the defense of freedom—have had wholly negative effects upon the entire non-Communist world. They have stultified the evolution of a basic long-range American design for the strategically all-important Pacific region, and they have brought nothing but confusion and uneasiness to the area's independent nations that separate us from the P.R.C., among them specifically Taiwan, South Korea, and the ASEAN group of nations.

These non-Communist states are determined to retain their independence, yet all are threatened today by the expansionist Communist empires of China, the Soviet Union, and Vietnam. Most of the societies in question were deeply influenced in previous centuries by Confucian China and in modern times by Europe and then by the United States. Indeed, the United States exerted itself to make them sovereign states in the name of self-determination and independence, aspirations now recognized in the United Nations as the foremost of all human rights.

This commitment to self-determination and independence informs our oft-stated goal to establish a world society of separate sovereign states. The commitment and the goal have been in obvious collision for some time now not only with the world views forcefully propounded by the P.R.C., the Soviet Union, Vietnam, and their respective surrogate nations, but also, and more importantly, with our own liberal dispositions toward the two principal Communist hegemonies. Our Asian dilemma, which is essentially self-induced, is well illustrated today by the predicament of Taiwan.

The United States erred in acceding to the view, shared by the P.R.C. and Taiwan, that there is only one China, and in choosing to ground this policy in international law. This reference to international law makes no connection either with the Confucian or with the Communist normative system. Both systems value international law mainly

44. *Id.* at 14.

as a defensive weapon in dealing with the West.⁴⁵ Further, international law was never the major guide to perceiving a state's identity even in its European homeland.

When it became clear that the Maoist version of Marxism-Leninism was firmly entrenched in the P.R.C., the United States should have guided the Taiwanese toward the recognition that they do in fact constitute a sovereign state, that this state is and will remain completely separate from the P.R.C., and that the United States can and will defend its identity. The following features mark Taiwan's identity: it is a modern Confucian society that is opposed to Communism; it is an intellectually active and productive society; it is politically stable and well ruled; and it has created one of the most modern and successful economies in the world. These differences are openly acknowledged by each of the two Chinas.⁴⁶

Important demographic factors strongly support the case for a "Two Chinas" policy. Of Taiwan's 18,000,000 inhabitants, 85% are native Taiwanese. Their representatives are now rising to power as the Kuomintang old guard retires, and they too seem to be deeply distrustful of the mainland government. The latter, in turn, is fearful that the ascendancy of this element may establish a government favoring total independence from the mainland.

This, then, is not the time to underwrite past errors in vision, to sign over a modern, moderately Confucian society to the totalitarian control of Communism, or to reprimand Taiwanese authorities for retaining martial law. In the context of our rights policy this would be the least credible and honorable course, and in the context of our security policies, it would only compound our earlier mistakes.

The following account of a conversation in 1944 with then Secretary of the Navy James Forrestal indicates what American strategy should be if it is to serve the long-range security interests of the nation:

[h]e asked us for a map of the Pacific, and when we produced it, he showed us the twin drives [of American forces]—one across the mid-Pacific and one up from the south toward the Philippines. He tapped the map at Formosa and said, "This is the whole key to the future in the Pacific. *He who controls Formosa can oversee the whole coast of continental Asia.* We can never, never let this island be controlled by any power potentially hostile to us. It is from bases here that we must maintain a

45. See Bozeman, *supra* note 2, at 65; see also A. BOZEMAN, *THE FUTURE OF LAW IN A MULTICULTURAL WORLD* 140-52 (1971).

46. See, e.g., F. BUTTERFIELD, *supra* note 31, at 448. A young Mainlander made the following remark: "What young people like me want to know is why China can't do as well as Taiwan." *Id.*

forward posture in a postwar Asia.⁴⁷

The Forrestal vision is even more persuasive today than it was forty years ago, before the Communist takeover of mainland China, Tibet, North Korea, Vietnam, Laos, and Cambodia, and the consequent ouster of American influence from the Eurasian landmass. Since the United States is itself basically a compact continental power, it may well have been instinctively inclined to relate its national security policies primarily to states that also controlled a great and continuous expanse of densely populated land, even if they were recognized as actual or potential enemies with weak economies. This perception of the world environment is myopic and outdated. We should shift our vision, therefore, to the vast ocean separating America from Asia, the plurality of independent, non-Communist states that it accommodates on islands and peninsulas and, above all, to the region's ethnically and culturally diverse nations. These include some of the world's most talented, historically experienced, and cosmopolitan peoples. Contrary to China, they were widening their horizons through navigation, trade, and other modes of interaction. Having had to relate to greatly various "international systems" among them those fashioned by Hindu and Buddhist India, China, Islamic traders and conquerors, western Europeans, Japanese, and Americans, they learned to borrow and assimilate alien ideas without losing their cultural identity.

The city state of Singapore exemplifies some of these achievements today in that it is consciously administering the fusion of Confucian and Western (mainly Anglo-American) mainsprings of culture. The island state's form of government is patterned on European parliamentary systems, and so is its economy. In fact, apart from Japan, Singapore enjoys the highest living standard in Asia. Further, it is internationally esteemed as a highly disciplined society, having one of the lowest crime rates in the world. Yet, the government of Prime Minister Lee Kuan Yew has been disturbed by what it sees as a falling away from certain ancient moral values that are thought to be capable of protecting this modern city state. Because these are essentially Confucian in nature (75% of the approximately 2.4 million Singaporeans are ethnic Chinese), it has been decided to counter the slippage into what might become hedonistic modernism by reviving instruction in Confucian ethics.

The corrections now under way bear directly on the present conflict between Eastern and Western conceptions of the individual and his

47. V. WALTERS, *SILENT MISSION* 111 (1978).

rights. The new laws are being introduced mainly in order to return to such traditional Chinese values as filial piety, scholarly discipline, decorum, and a proper sense of shame so as to weaken the impact of certain liberal western concepts that place too much emphasis on youth, vitality, and selfish individualism, and not enough on respect for age, and wisdom and on the moral duty to take care of the family's old. Some of these reforms may deviate from contemporary American conceptions of "liberty," but most appear readily compatible with the political freedoms implicit in the existing parliamentary system of government.⁴⁸

The general issue before us is thus neatly joined in this particular case: the cultural infrastructure is being reasserted deliberately so as to assure the security of a state that is severely threatened by aggressive forces from without. Further, in the measure in which this policy is deemed by some American observers to be a "derogation" of international covenants, it is relevant to note that the policy has been carried out overtly, explicitly, and for clearly stated reasons. Most departures from such allegedly universally binding norms are, by contrast, not considered policies but spontaneous reactions to felt threats and needs that emanate from the indigenous sub-stratum of values and beliefs.

This constellation of challenges and responses is well illustrated by South Korea, an indispensable ally of the United States in the context of the geopolitical realities persuasively stressed in the Forrestal doctrine. Marked for extinction by the Soviet Union and its North Korean surrogate, South Korea is an independent yet authoritarian state today. Its problems with our strictures concerning individuated rights can be understood only in light of the nation's long and complex history.

At the beginning of this century, Korea was a Confucian monarchy, tutored throughout centuries by the "Father" Emperor of the Middle Kingdom within whose family it served as an important hedge-guarding satellite. Subsequently, after the eclipse of China and the ascendancy of Japan, Korea became the latter's colony for thirty-five years. Neither of these morally and politically trying epochs provided incentives to develop the kind of democratic institutions considered *de rigueur* by contemporary American critics of non-Western regimes.⁴⁹

48. For a brief survey of this issue see Campbell, *Singapore Plans to Revive Study of Confucianism*, N.Y. Times, May 20, 1982, at A2, col. 3.

49. Historical perspectives were stressed by the Department of State in a policy statement published in 1974. See *Department Discusses the Human Rights Situation in the Republic of Korea*, 71 DEPT. STATE BULL. 305 (1974) (statement of Arthur Hummel, Acting Assistant Secretary for East Asian and Pacific Affairs); see also M. NELSON, *KOREA AND THE OLD ORDERS IN EASTERN ASIA* (1946) (excellent historical exposition). In regard to

Human Rights and National Security

Liberation and independence were followed by war, the nation's division, and relentless aggressive moves by North Korea's Soviet-supported regime to thwart South Korea's development toward democracy and subdue its will to survive so as to bring about re-unification on Communist terms. Despite these adversities, Seoul's government succeeded in recording near miraculous economic growth, maintaining its military defense forces, and assuring the nation's independence. The price for this kind of security—and the majority of the citizenry appear to have paid it willingly—has been the suspension or limitation of some of the rights listed in the country's modern Western-type constitution and the Universal Declaration of Human Rights, among them habeas corpus, the right to strike, and freedom to dissent on major policy issues.

Non-compliance with Western standards of free speech and academic freedom in general has evoked the most criticism in intellectual circles in the United States, especially during the Carter administration. It is useful, therefore, in the case of South Korea as in that of Taiwan or Singapore, to remember the millennial non-Communist Chinese heritage that conditioned all sinicized societies to value consensus and avoid conflict and confusion. The T'ang Code's list of crimes thus begins with the "Ten Great Abominations," the first being "plotting rebellion" and the seventh "discord," by which is meant anything that upsets the harmony of the Five Classic Relationships. Whoever acts from a different ethic is thus considered to act criminally in this civilization.

This is the irremovable backdrop for evaluating the South Korean reaction to Kim Dae Jung's persistent dissent and to violent student demonstrations against the government of Chun Doo Hwan.⁵⁰ It also explains why President Chun generally is not viewed in South Korea as the tyrannical ogre that American critics depict, but rather, and in Confucian terms, as the new father of the Korean family or as the all-provident king.

In light of these cultural realities and of the American dependence on an independent self-reliant Korea, the United States should return to the policy position outlined by the State Department in 1974 when

modern times, see *KOREAN POLITICS IN TRANSITION* (E. Wright ed. 1975) (of particular interest here is an article entitled *Toward a New Theory of Korean Politics: A Reexamination of Traditional Factors* by Pyong-choon Hahm, then Ambassador to the United States). See also Myers, *The U.S. and Korea: Values in Conflict*, *WORLD VIEW*, Oct. 1981, at 13 (analysis of current problems of U.S. policy).

50. See Myers, *supra* note 49. See also *Wall St. J.*, May 30, 1980, at 20, col. 1; *N.Y. Times*, May 27, 1980, at 1, col. 4.

the Department stressed the need for military assistance in response to congressional doubt of its appropriateness for a "repressive" society. Korea's political institutions may be imperfect but they are in place, it noted. Further, Korea is a viable independent state and in that capacity a key element of American efforts to assure the security of Northeast Asia. Besides, congressional critics were reminded,

Our aid is not intended as support to, or leverage on any given government or leader, but is rather provided to enable a given country to develop its institutions so that to the greatest extent possible it can enjoy freedom, be self-reliant, and can contribute to world peace and prosperity.⁵¹

VI. Conclusion

The historical records presented in this paper do not support the common American trust in the universal validity of civil liberties, individuated political freedoms, and the concept of equality. Amplified by the results of studies of India, the Middle East, and Black Africa, which for reasons of space could not be included in this discussion of the relation between human rights and national security, the evidence supports the conclusion that the infrastructures of non-Western societies simply cannot sustain the Occidental ideas of the autonomous person and the constitutionally organized state. The normative principles that have assured security and survival in the literate civilizations of the Orient and in traditionally nonliterate Africa are rather social constraint, inequality, and authoritarian rule. Missing are equivalents for Western-type constitutional and criminal law, the elementary prerequisites for political freedoms and individuated rights.

These realities were obscured during the brief period of Westernization. Now, however, they are reasserting themselves throughout the so-called Third World, as nations seek security by rallying to trusted values, customs, and institutions, frequently in counterpoint to their written promises and international pledges.

Foreign policy must be made today in a welter of ambiguities. The human rights vocabulary is not acceptable at face value in our times, and the same holds for the classical language of the state system and international law. While we in the West continue to cling to our traditional distinction between peace and war when we estimate our own or another state's security needs, Communist and most non-Communist,

51. *Department Discusses the Human Rights Situation in the Republic of Korea*, *supra* note 49, at 309.

Human Rights and National Security

non-Western nations, by contrast, subscribe to the proposition that war and peace are interpenetrating. Indeed this is what has come to mark the world environment today.

The focus of American decision-making with regard to friendly states that derogate from international legal commitments to respect political rights should be where it was in 1975 when the State Department expressed itself as follows:

[i]n view of the widespread nature of human-rights violations in the world, we have found no adequately objective way to make distinctions of degree between nations. This fact leads us, therefore, to the conclusion that neither the United States security interest nor the human rights cause would be properly served by the public obloquy and impaired relations with security-assistance recipient countries that would follow the making of inherently subjective United States Government determinations that "gross violations do or do not exist" or that a "consistent" pattern of such violations does or does not exist in such countries.⁵²

52. N.Y. Times, Feb. 25, 1977, at A3, col. 2 (quoting State Department memorandum prepared in late 1975).